IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7135 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL RASHID ABDUL AZIZ

Versus

M/S. CHOKSI TUBE CO. LTD.

Appearance:

1. Special Civil Application No. 7135 of 2001

MR DG SHUKLA for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/03/2002

ORAL JUDGEMENT

This petition styled as a petition under Article 226 and 227 of the Constitution of India, in reality challenges the order of the Labour Court, Ahmedabad in

Reference (LCA) No. 2257/94, whereby, exercising the powers under Section 11A of the Industrial Disputes Act, the Court substituted the punishment with an award of compensation of Rs. 75,000/- along with cost of Rs. 3,000/-.

2. The learned Counsel Mr. Shukla took the Court through the record of the case and argued that the impugned award was perverse in so far as the plea of victimisation was not believed and the Labour Court took admission of the enquiry papers as an admission of misconduct. It was also submitted that the exercise of powers under Section 11A was not proper in so far as not only that reinstatement was denied, but a small amount of Rs. 75,000/- was awarded by way of compensation.

3. The learned Counsel for the respondent Mr. Chauhan submitted that this is not a bonafide litigation, in so far as after the award dated 13.6.2000, the petitioner had received the amount of Rs. 78,000/- in terms of the award on 18.5.2001 along with other terminal benefits and thereafter filed this petition only with a view to claim some more benefits.

4. It is obvious on the plain reading of the impugned award that after appreciating the material on record and on the basis of the petitioner having admitted the legality and propriety of the Departmental enquiry, the Court had arrived at the conclusion that the charges against the petitioner were proved. Neither before the Labour Court, nor before this Court, was it established that the finding of the enquiry was in any way perverse. As regards the plea of adding charges into the on going enquiry, no violation of any Rule or any principle of natural justice could be pointed out. Therefore, the whole matter ultimately hinged on the propriety or proportionality of the punishment. It was the common ground that the petitioner was, on an earlier occasion also dismissed and reinstated after an order of the Labour Court. In view of this past record, as also the nature of misconduct held to have been proved, viz. disobedience and disinclination to work, in all fairness the petitioner could not have expected to be reinstated. However, exercising the discretion conferred upon the Labour Court under Section 11A of the Industrial Disputes Act and considering the remaining years of service, the Labour Court has awarded a lumpsum amount of Rs. 75,000/by way of compensation. This Court cannot weigh in a golden scale the issue whether this amount of compensation was on the higher side or on the lower side. However, it cannot be gain said that substantial justice

was done in due exercise of powers conferred upon the Labour Court.

5. In these facts and circumstances, there being no jurisdictional error or any error apparent on the face of the record in making of the impugned award, there is no reason to interfere with the same in exercise of extra-ordinary jurisdiction of this Court. The petition is therefore rejected at the threshold and notice is discharged with no order as to costs.

(D.H.Waghela, J.)

*/Mohandas